

AMENDED IN ASSEMBLY MAY 3, 2006

AMENDED IN ASSEMBLY APRIL 27, 2006

AMENDED IN ASSEMBLY APRIL 18, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2851

Introduced by Assembly Member DeVore

February 24, 2006

An act to amend Section 1351 of the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 2851, as amended, DeVore. Common interest developments.

Existing law defines “condominium plan,” for purposes of the Davis-Stirling Common Interest Development Act, as consisting of specified components, including a certificate consenting to the recordation of the condominium plan signed and acknowledged by certain persons. Existing law authorizes a condominium plan to be amended or revoked by a subsequently acknowledged recorded instrument executed by all of the persons whose signatures were required on the certificate.

This bill instead would authorize a condominium plan to be amended or revoked by a subsequently acknowledged recorded instrument executed by all of the persons whose signatures would be required on the certificate as of the date of the amendment or revocation for the condominium project. The bill would further authorize the amendment of a condominium plan *by an association for the purpose of repairing, rebuilding, or reconstructing all or a portion of a condominium project, as specified*, upon the receipt of a

unanimous vote of the owners whose units are subject to that condominium plan, or upon the receipt of a majority vote of the owners whose units are subject to that condominium plan and the approval of the superior court using a specified petition process. The bill also would *authorize an association to amend a condominium plan for other purposes*, set forth notice and recording requirements for amendment of a condominium plan, specify requirements for execution of amendments to plans that affect only industrial or commercial users, and provide that no amendment of a condominium plan is required for a unit owner to use any common area wall, floor, or ceiling area adjacent to the unit for installing utilities and other fixtures, as specified. The bill would make other technical, nonsubstantive changes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1351 of the Civil Code is amended to
- 2 read:
- 3 1351. As used in this title, the following terms have the
- 4 following meanings:
- 5 (a) "Association" means a nonprofit corporation or
- 6 unincorporated association created for the purpose of managing a
- 7 common interest development.
- 8 (b) "Common area" means the entire common interest
- 9 development except the separate interests therein. The estate in
- 10 the common area may be a fee, a life estate, an estate for years,
- 11 or any combination of the foregoing. However, the common area
- 12 for a planned development specified in paragraph (2) of
- 13 subdivision (k) may consist of mutual or reciprocal easement
- 14 rights appurtenant to the separate interests.
- 15 (c) "Common interest development" means any of the
- 16 following:
- 17 (1) A community apartment project.
- 18 (2) A condominium project.
- 19 (3) A planned development.
- 20 (4) A stock cooperative.

1 (d) “Community apartment project” means a development in
2 which an undivided interest in land is coupled with the right of
3 exclusive occupancy of any apartment located thereon.

4 (e) “Condominium plan” means a plan consisting of all of the
5 following:

6 (1) A description or survey map of a condominium project,
7 which shall refer to or show monumentation on the ground.

8 (2) A three-dimensional description of a condominium project,
9 one or more dimensions of which may extend for an indefinite
10 distance upwards or downwards, in sufficient detail to identify
11 the common areas and each separate interest.

12 (3) (A) A certificate consenting to the recordation of the
13 condominium plan pursuant to this title signed and
14 acknowledged by the following:

15 (i) The record owner of fee title to that property included in
16 the condominium project.

17 (ii) In the case of a condominium project that will terminate
18 upon the termination of an estate for years, the certificate shall be
19 signed and acknowledged by all lessors and lessees of the estate
20 for years.

21 (iii) In the case of a condominium project subject to a life
22 estate, the certificate shall be signed and acknowledged by all life
23 tenants and remainder interests.

24 (iv) The certificate shall also be signed and acknowledged by
25 either the trustee or the beneficiary of each recorded deed of
26 trust, and the mortgagee of each recorded mortgage encumbering
27 the property.

28 (v) Owners of mineral rights, easements, rights-of-way, and
29 other nonpossessory interests do not need to sign the
30 condominium plan. Further, in the event a conversion to
31 condominiums of a community apartment project or stock
32 cooperative has been approved by the required number of
33 owners, trustees, beneficiaries, and mortgagees pursuant to
34 Section 66452.10 of the Government Code, the certificate need
35 only be signed by those owners, trustees, beneficiaries, and
36 mortgagees approving the conversion.

37 (B) A condominium plan may be amended or revoked by a
38 subsequently acknowledged recorded instrument executed by all
39 the persons whose signatures would be required pursuant to

1 clauses (i) to (v), inclusive, of subparagraph (A), as of the date of
2 the amendment or revocation for the condominium project.

3 (C) (i) The association may amend a condominium plan *for*
4 *the purpose of repairing, rebuilding, or reconstructing all or a*
5 *portion of a condominium project, as described in its*
6 *condominium plan, due to structural or component failure,*
7 *failure to meet applicable legal standards, including the federal*
8 *Americans with Disabilities Act of 1990 and building code*
9 *requirements, correction of defects, mitigation of hazardous*
10 *materials, damage, or destruction, upon receiving either of the*
11 *following:*

12 (I) A unanimous vote of the owners whose units are subject to
13 that condominium plan.

14 (II) A majority vote of the owners whose units are subject to
15 that condominium plan and the approval of the superior court
16 using the petition process provided in Section 1356.

17 (ii) *The association may amend a condominium plan for*
18 *purposes other than those specified in clause (i), upon receiving*
19 *either of the following:*

20 (I) *A unanimous vote of the owners whose units are subject to*
21 *that condominium plan.*

22 (II) *Sixty-seven percent of the vote of the owners whose units*
23 *are subject to that condominium plan and the approval of the*
24 *superior court using the petition process provided in Section*
25 *1356.*

26 (iii) The association shall hold a meeting of owners to discuss
27 the amendment to the condominium plan before a vote is held. At
28 least 30 days prior to the meeting, the owners shall receive copies
29 of all of the following:

30 (I) The current condominium plan.

31 (II) A complete description of the amendment.

32 (III) Copies of any notice materials apprising the owners of the
33 meeting day, time, and location.

34 (IV) An explanation of the reason for the amendment.

35 The amendment shall be reasonable and shall not eliminate any
36 special rights, preferences, or privileges of an owner or impair
37 the security interest of a mortgagee of a mortgage or the
38 beneficiary of a deed of trust.

39 (V) *A notice printed in at least 14-point boldface type, which*
40 *reads as follows:*

1 *YOUR UNIT IS LOCATED IN THIS CONDOMINIUM PLAN*
2 *AND ITS SQUARE FOOTAGE MAY BE ALTERED IF THE*
3 *PLAN IS APPROVED BY THE OWNERS. IT IS YOUR RIGHT*
4 *TO CONSULT WITH THE ASSOCIATION REGARDING*
5 *THESE ALTERATIONS TO YOUR UNIT. IT IS YOUR RIGHT*
6 *TO OBJECT TO THE ALTERATION BY SUBMITTING YOUR*
7 *OBJECTION IN WRITING. IT IS ALSO YOUR RIGHT TO*
8 *CONSENT TO THE ALTERATION IN WRITING. WRITTEN*
9 *OBJECTIONS AND CONSENT DOCUMENTS SHALL BE*
10 *KEPT ON FILE WITH THE ASSOCIATION AND SHALL BE*
11 *INCLUDED IN YOUR UNIT SALE TRANSACTIONS.*

12 ~~(iii)~~

13 (iv) If the amendment to the condominium plan would affect
14 only industrial or commercial users as provided in Section 1373,
15 and the amendment is for the purpose of moving the boundaries
16 between two or more industrial or commercial units, the
17 amendment shall be executed by all owners of the affected units,
18 the beneficiary or trustee of any recorded deed of trust, the
19 mortgagee of each recorded mortgage encumbering the affected
20 units, and the association.

21 ~~(iv)~~

22 (v) If the amendment to the condominium plan would affect
23 only industrial or commercial users as provided in Section 1373,
24 and the amendment is for the purpose of allowing the owner of a
25 unit to further subdivide the unit, unless the condominium plan or
26 the declaration provides additional restrictions on the subdivision
27 of units, the amendment shall be executed by the owner of the
28 unit, the beneficiary or trustee of any recorded deed of trust, and
29 the mortgagee of each recorded mortgage encumbering the
30 affected unit.

31 (D) The division of a three-dimensional portion or portions of
32 property into condominiums as provided in subdivision (e) of
33 Section 66427 of the Government Code is not an amendment to a
34 condominium plan.

35 (E) No amendment to the condominium plan is required for
36 the purpose of allowing a unit owner to use any common area
37 wall, floor, or ceiling area consisting of a portion of a building
38 adjacent to the unit or the unit's exclusive-use common area for
39 installing and maintaining utilities or other services, installing
40 electrical or other service outlets located in the floor, walls, or

1 ceiling, or installing cabinets or other fixtures, windows, or
2 skylights. *This subparagraph does not eliminate any right of the*
3 *association to control the use of those common areas. The*
4 *approval of the association is not subject to the requirements of*
5 *Section 1363.07.*

6 (F) An amendment to a condominium plan is not effective
7 until the amendment has been recorded in the county in which
8 the common interest development is located. Upon recordation of
9 the amendment, the amendment shall have the same force and
10 effect as the condominium plan. If an amendment is made
11 pursuant to clause (i) of subparagraph (C), the association shall
12 deliver or mail a copy of the amendment to each affected owner
13 of the association, together with a statement that the amendment
14 has been recorded.

15 (f) A “condominium project” means a development consisting
16 of condominiums. A condominium consists of an undivided
17 interest in common in a portion of real property coupled with a
18 separate interest in space called a unit, the boundaries of which
19 are described on a recorded final map, parcel map, or
20 condominium plan in sufficient detail to locate all boundaries
21 thereof. The area within these boundaries may be filled with air,
22 earth, or water, or any combination thereof, and need not be
23 physically attached to land except by easements for access and, if
24 necessary, support. The description of the unit may refer to (1)
25 boundaries described in the recorded final map, parcel map, or
26 condominium plan, (2) physical boundaries, either in existence,
27 or to be constructed, such as walls, floors, and ceilings of a
28 structure or any portion thereof, (3) an entire structure containing
29 one or more units, or (4) any combination thereof. The portion or
30 portions of the real property held in undivided interest may be all
31 of the real property, except for the separate interests, or may
32 include a particular three-dimensional portion thereof, the
33 boundaries of which are described on a recorded final map,
34 parcel map, or condominium plan. The area within these
35 boundaries may be filled with air, earth, or water, or any
36 combination thereof, and need not be physically attached to land
37 except by easements for access and, if necessary, support. An
38 individual condominium within a condominium project may
39 include, in addition, a separate interest in other portions of the
40 real property.

1 (g) “Declarant” means the person or group of persons
2 designated in the declaration as declarant, or if no declarant is
3 designated, the person or group of persons who sign the original
4 declaration or who succeed to special rights, preferences, or
5 privileges designated in the declaration as belonging to the
6 signator of the original declaration.

7 (h) “Declaration” means the document, however denominated,
8 that contains the information required by Section 1353.

9 (i) “Exclusive use common area” means a portion of the
10 common areas designated by the declaration for the exclusive use
11 of one or more, but fewer than all, of the owners of the separate
12 interests and that is or will be appurtenant to the separate interest
13 or interests.

14 (1) Unless the declaration otherwise provides, any shutters,
15 awnings, window boxes, doorsteps, stoops, porches, balconies,
16 patios, exterior doors, doorframes, and hardware incident thereto,
17 screens and windows or other fixtures designed to serve a single
18 separate interest, but located outside the boundaries of the
19 separate interest, are exclusive use common areas allocated
20 exclusively to that separate interest.

21 (2) Notwithstanding the provisions of the declaration, internal
22 and external telephone wiring designed to serve a single separate
23 interest, but located outside the boundaries of the separate
24 interest, are exclusive use common areas allocated exclusively to
25 that separate interest.

26 (j) “Governing documents” means the declaration and any
27 other documents, such as bylaws, operating rules of the
28 association, articles of incorporation, or articles of association,
29 that govern the operation of the common interest development or
30 association.

31 (k) “Planned development” means a development, other than a
32 community apartment project, a condominium project, or a stock
33 cooperative, having either or both of the following features:

34 (1) The common area is owned either by an association or in
35 common by the owners of the separate interests who possess
36 appurtenant rights to the beneficial use and enjoyment of the
37 common area.

38 (2) A power exists in the association to enforce an obligation
39 of an owner of a separate interest with respect to the beneficial
40 use and enjoyment of the common area by means of an

1 assessment that may become a lien upon the separate interests in
2 accordance with Section 1367 or 1367.1.

3 (l) (1) “Separate interest” has the following meanings:

4 (A) In a community apartment project, “separate interest”
5 means the exclusive right to occupy an apartment, as specified in
6 subdivision (d).

7 (B) In a condominium project, “separate interest” means an
8 individual unit, as specified in subdivision (f).

9 (C) In a planned development, “separate interest” means a
10 separately owned lot, parcel, area, or space.

11 (D) In a stock cooperative, “separate interest” means the
12 exclusive right to occupy a portion of the real property, as
13 specified in subdivision (m).

14 (2) Unless the declaration or condominium plan, if any exists,
15 otherwise provides, if walls, floors, or ceilings are designated as
16 boundaries of a separate interest, the interior surfaces of the
17 perimeter walls, floors, ceilings, windows, doors, and outlets
18 located within the separate interest are part of the separate
19 interest and any other portions of the walls, floors, or ceilings are
20 part of the common areas.

21 (3) The estate in a separate interest may be a fee, a life estate,
22 an estate for years, or any combination of the foregoing.

23 (m) “Stock cooperative” means a development in which a
24 corporation is formed or availed of, primarily for the purpose of
25 holding title to, either in fee simple or for a term of years,
26 improved real property, and all or substantially all of the
27 shareholders of the corporation receive a right of exclusive
28 occupancy in a portion of the real property, title to which is held
29 by the corporation. The owners’ interest in the corporation,
30 whether evidenced by a share of stock, a certificate of
31 membership, or otherwise, shall be deemed to be an interest in a
32 common interest development and a real estate development for
33 purposes of subdivision (f) of Section 25100 of the Corporations
34 Code.

35 A “stock cooperative” includes a limited equity housing
36 cooperative that is a stock cooperative that meets the criteria of
37 Section 33007.5 of the Health and Safety Code.

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